

January 18, 2006

Federal Communications Commission
Consumer & Governmental Affairs Bureau
Policy Division
445 12th Street, S.W. Room 5-A866
Washington, D.C. 20554

RE: Rules and Regulations Implementing the Telephone Consumer
Protection Act of 1991 [CG Docket No. 02-278, DA 05-2975]

To Whom It May Concern:

The National Multi Housing Council (NMHC) and the National
Apartment Association (NAA) are pleased to submit comments relative
to the Junk Fax Protection Act of 2005.

The National Multi Housing Council and the National Apartment
Association represent the nation's leading firms participating in
the multifamily rental housing industry. Our combined memberships
are engaged in all aspects of the apartment industry, including
ownership, development, management, and finance. The National
Multi Housing Council represents the principal officers of the
apartment industry's largest and most prominent firms. The
National Apartment Association is the largest national federation
of state and local apartment associations. NAA is comprised of 190
affiliates and represents nearly 50,000 professionals who own and
manage more than 6 million apartments. NMHC and NAA jointly
operate a federal legislative program and provide a unified voice
for the private apartment industry.

Our organizations support and welcome the amendments to the
Telephone and Consumer Protection Act (TCPA) and believe that they
offer much needed regulatory relief for multifamily owners and
operators who legitimately utilize facsimile communications in
their daily business operations. We would like to offer our
thoughts on several of the key issues raised in the Notice.

I. Recognition of the Established Business Relationship (EBR) and Time Limits

The Junk Fax Prevention Act (JFPA) recognizes an EBR as an exemption to the otherwise blanket prohibition on sending unsolicited facsimile advertisements. The EBR provides permission by means other than a signed written statement by the recipient, as was the intent of Congress when enacting the Junk Fax Prevention Act. NMHC/NAA fully support this interpretation. Multifamily property owners and managers as well as our trade associations utilize fax communications primarily for the following purposes: 1) to respond to inquiries from consumers or members, 2) to process transactional communications, and 3) to disseminate information to our memberships. The exemption and amended definition of the EBR is consistent with the needs of our members and offers clarity to those situations which otherwise may have triggered an unnecessary compliance obligation.

For purposes of paragraph (a)(3) of this section, the term established business relationship means a prior or existing relationship formed by a voluntary two way communication between a person or entity and a business or residential subscriber which with or without an exchange of consideration, on the basis of an inquiry, application, purchase or transaction by the business or residential subscriber regarding products or services offered by such person or entity, which relationship has not been previously terminated by either party.

The Commission asks whether a time limit should be imposed on the EBR and whether or not there are benefits to such limits. Given the limited circumstances under which our members utilize faxed communications, it is hard to determine how a time limit may prove beneficial and would only serve to create unnecessary recordkeeping requirements on multifamily owners. Since the recipient always has the ability to opt out of receiving any future facsimile advertisements, there appears to be little need to impose a time limit absent any real evidence of abuse.

II. Notice of Opt Out Opportunity

The Junk Fax Prevention Act requires senders of facsimile advertisements to include a notice on the first page of the facsimile that informs the recipient of the 1) ability, and 2) the means to re-request that they not receive future advertisements from the sender. The notice must be clear and conspicuous, defined as apparent to the reasonable consumer. We do not believe it is necessary to describe circumstances in which a notice will be considered clear and conspicuous. The multi-family industry already has considerable experience given its similar obligations under the CAN-SPAM Act, which also requires an Opt-Out opportunity for e-mail transmissions. The shortest reasonable time period within which a sender must comply with a request is 30 days. A shorter time period may certainly be achievable and in most cases the request will be honored immediately but given the similar Federal Trade Commission (FTC) requirements already in place for the tele-marketing rules, it is preferred that the Commission establish a consistent timetable to avoid any confusion.

In addition to the opt out notice being clear and conspicuous, and requiring a specific time period in which to honor the request, the notice itself must also contain certain features. Specifically, the notice must include a domestic telephone number and facsimile machine number for the recipient to transmit a request. It must also include a cost free mechanism to transmit such a request that is always available. NMHC/NAA strongly encourage the Commission to identify multiple ways a business owner and manager can meet this requirement. Offering local telephone numbers to process these requests as well as directing consumers to the senders' website, should be considered two acceptable means of meeting the "cost-free" mechanisms. Processing opt-out requests through a website also provides the sender, as well as the recipient, added recordkeeping opportunities in the event of an alleged violation. The establishment of toll free numbers is not a viable option for all businesses, especially for small business operators who may not have the resources to absorb this added compliance cost.

III. Authority to Establish Nonprofit Exemption

The Commission at its discretion may exempt tax-exempt nonprofit organizations from the opt-out notice requirements for those unsolicited advertisements sent to members in furtherance of their tax exempt purpose. Again, it would be under very rare circumstances that a property owner, manager or trade association would send an unsolicited facsimile. The simple and straightforward purposes for utilizing facsimile communications are to:

- 1) respond to inquiries from consumers seeking rental opportunities
- 2) exchange information with service suppliers and business partners (invoices, contracts, service agreements, purchase orders, etc.)
- 3) announce upcoming association meetings and seminars, new products, newsletters, and miscellaneous association business news

Typically all of the above communications are conducted via the internet, electronic mail, or regular mail. However, there will always be the need for quick transmission of information under certain circumstances that will require the use of facsimile communications. To put in place unnecessary restrictions for these occasions will unfairly place a costly burden on otherwise legitimate business communications. Therefore, NMHC/NAA strongly support granting an exemption for non profits from the Opt-Out notice requirements. Without an exemption, NMHC/NAA and other nonprofit groups would face unnecessary and potentially costly compliance obligations.

We thank you for the opportunity to express the views of NMHC/NAA.

Sincerely,

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